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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/030,038	05/20/2002	Burkhard Mueller	H 3799 PCT/US	8946
423	7590	11/03/2004	EXAMINER	
HENKEL CORPORATION THE TRIAD, SUITE 200 2200 RENAISSANCE BLVD. GULPH MILLS, PA 19406			ELHILO, EISA B	
			ART UNIT	PAPER NUMBER
			1751	

DATE MAILED: 11/03/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/030,038

Applicant(s)

MUELLER ET AL.

Examiner

Eisa B Elhilo

Art Unit

1751

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 12 August 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 10-30 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 10-30 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: _____

DETAILED ACTION

1 This action is responsive to the response filed on August 12, 2004.

2 The rejection of claims 10-18, 20-23, 25-28 and 30 under 35 U.S.C. 103(a) as being
unpatentable over Greiche et al. (US 4,859,459), is maintained for the reasons set forth in the
previous office action that mailed on 2, 24,2004.

3 The rejection of claims 19, 24 and 29 under 35 U.S.C. 103(a) as being unpatentable over
Greiche et al. (US 4,859,459) in view of Cannell et al. (US 5,681,554), is maintained for the
reasons set forth in the previous office action that mailed on 2, 24,2004.

Response to Applicant's Arguments

4 Applicant's arguments filed 8,12,2004 have been fully considered but they are not
persuasive.

With respect to the rejection based upon Greiche et al. (US' 459), Applicant argues that
Greiche et al. does not teach or disclose multi-phase systems as required in the instant claims.

The examiner respectfully, disagrees with the above argument because the reference
teaches a similar method for deforming keratin fibers by applying to the keratin fibers a
composition in an emulsion form (see col. 4, lines 57-58), which implies that at least two
different layers or phases are mixed together to form a single phase of the emulsion. Therefore,
this is an obvious formulation.

With respect to the rejection based upon Greiche et al. (US' 459) in view of Cannell et al.
(US' 554), Applicant argues that there is no suggestion or incentive to add these hydrolyzates
which are used to protect hair from damage from various sources to the formations of Greiche et
al. to yield the multi-phase hair curing formulations as claimed.

The examiner respectfully, disagrees with the above argument because both Greiche et al. (US' 459) and Cannell et al. (US' 554) are teaching hair treating compositions and therefore, the references are in the same analogous art. The primary reference of Greiche et al. teaches a composition for shaping hair. Cannell et al. as a secondary reference clearly teaches a hair treating composition comprising hydrolyzed protein for protecting the hair from damage by chemicals that provided in different hair treating compositions such as dyeing and shampooing or water in swimming pools (see col. 1, lines 23-34). Therefore, there is a motivation to one having ordinary skill in the art at the time of the invention to incorporate the hydrolyzed protein as taught by Cannell et al. in the hair treating composition of Greuche et al. with the reasonable expectation of success for protecting the hair from damage that may caused by the chemicals in these shaping compositions. Therefore, the combination of the references is proper.

With respect to the declaration provided by the applicant to show unexpected results of the claimed invention over the prior art of record, the examiner's position is that the declaration is not commensurate in the scope with the claims because the "objective evidence of nonobviousness must be commensurate in the scope with the claims which the evidence is offered to support," In other words, the showing of unexpected results must be reviewed to see if the results occur over the entire claimed range. *In re Clemens*, 622 F.2d 1029,1036,206 USPQ 289, 296 (CCPA 1980). See also *In re Gransselli*, 713 F.2d 731, 741,218 USPQ 769, 777 (F3d. Cir. 1983) (Claims were directed to certain catalysts containing an alkali metal. Evidence presented to rebut an obviousness rejection compared catalysts containing sodium with the prior art. The court held this evidence insufficient to rebut the prima facie case because experiments limited to sodium were not commensurate in the scope with the claims.). In this case the

Art Unit: 1751

Comparative data in the declaration recite 2-ethylhexane 1,3-diol while the claims recite a range of C4-C10 alcohols and not specific alcohol and thus, the experiments limited to 2-ethylhexane alcohol were not commensurate in the scope with the claims.

5 **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Eisa B Elhilo whose telephone number is (571) 272-1315. The examiner can normally be reached on M - F (8:00 -5:30) with alternate Friday off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Yogendra Gupta can be reached on (571) 272-1316. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Art Unit: 1751

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Eisa Elhilo
November 1, 2004


MARGARET EINSMANN
PRIMARY EXAMINER
GROUP 1100